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October 5, 1992

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: CC Docket No. 92-115
Joint Comments of Pac-West Telecomm, Inc., and
PagePrompt U.S.A.

Dear Ms. Searcy:

Transmitted herewith on behalf of Pac West Telecomm, Inc., and PagePrompt U.S.A., is an original and four (4) copies of their Joint Comments in the above-referenced docket.

Please direct any questions or correspondence concerning this submission to our office.

Respectfully submitted,

William J. Franklin
William J. Franklin

cc: John Cimko, Jr. (by hand)
Pac-West Telecomm, Inc.
PagePrompt U.S.A.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Revision of Part 22 of) CC Docket No. 92-115
the Commission's Rules)
Governing the Public)
Mobile Services)

To: The Commission

JOINT COMMENTS OF
PAC-WEST TELECOMM, INC.
AND
PAGEPROMPT U.S.A.

Pac-West Telecomm, Inc. ("Pac-West") and PagePrompt U.S.A. ("PagePrompt"), by their attorneys and pursuant to Section 1.415(b) of the Commission's Rules, hereby file Joint Comments with respect to the Notice of Proposed Rule Making adopted in the above-captioned proceeding.^{1/} Without taking specific positions on most of the issues raised in this proceeding, Pac-West and PagePrompt generally support the Commission's goal of updating Part 22 of the Rules. However, as set forth below, Pac-West and PagePrompt suggest that the Commission's proposed Section 22.507(a), as written, does not serve the public interest.

INTEREST OF THE PARTIES

Both Pac-West and PagePrompt are Part 22 licensees with existing common-carrier paging and two-way systems. Among its other Part 22 licenses, Pac-West is the licensee of PLMS Station

^{1/} Revision of Part 22, 7 FCC Rcd 3658 (1992) (Notice of Proposed Rule Making) ("NPRM").

KNKL681, with 43 authorized locations across the state of California and 3 other authorized locations in Nevada. Pac-West also has applications pending to add 21 locations in California and 2 in Nevada. All of Pac-West's transmitters for station KNKL681 are licensed on 931.5375 MHz so that it can provide wide-area paging service across California and into Nevada. With the recent and ongoing activation of numerous additional transmitters on this system, Pac-West anticipates the number of subscribers on the system will be growing by about 500 subscribers per month.

PagePrompt is the licensee of PLMS Stations KNKI691, KNKO310, KNKO203, and KNKM688, with a total 71 authorized locations across the state of California, 7 authorized locations in Nevada, and 2 authorized locations in Arizona. PagePrompt also has applications pending to add 5 locations in California and 1 in Nevada. All of PagePrompt's transmitters are licensed on 931.5625 MHz so that it can provide wide-area paging service across California and into the adjacent states. PagePrompt currently has approximately 25,000 subscriber units on this system.

Pac-West and PagePrompt are independently owned and managed, maintaining separate subscriber lists, distribution channels, and pricing. However, they share one important characteristic: in order to achieve economies of scale as relatively new paging systems, pursuant to written contract, they jointly operate independently licensed dual-frequency 900 MHz paging transmitters at certain locations.

DESCRIPTION OF PROPOSED SECTION 22.507(a)

Proposed Section 22.507(a) would render Pac-West's and Page-Prompt's joint mode of operation illegal without any consideration of its offsetting benefits to the public. Specifically, proposed Section 22.507(a) reads as follows:

(a) Unless otherwise allowed in this subpart, each station must comprise at least one separate and dedicated transmitter, providing service to the public, for each transmitting channel at each location where that channel is assigned for use by that station.^{2/}

Appendix A to the NPRM, Proposed Rules Discussion, states the Commission's purpose in proposing Section 22.507(a):

This [proposed rule] is intended to eliminate the practice among some licensees whereby one multi-frequency transmitter is installed at a site where two or more channels are authorized. Although the transmitter may transmit on any one of the authorized channels, it cannot transmit on more than one of them at the same time. We believe that such practice can result in inefficient use of spectrum. Requiring at least one transmitter for each authorized channel at each location would discourage warehousing.^{3/}

The Commission thus proposed Section 22.507(a) to prevent frequency warehousing by a single licensee.

However, recognizing that it might not understand the unintended side effects of its proposal, the Commission also requested comment "as to whether there is a less stringent requirement that would also meet this objective." Id.

Pac-West and PagePrompt respectfully suggest that proposed Section 22.507(a) can still satisfy the Commission's goals

^{2/} NPRM, supra, 7 FCC Rcd at 3707.

^{3/} Id. at 3669.

without unduly burdening licensees by adding the phrase "to a single licensee or its affiliates" at end of proposed Section 22.507(a).^{4/}

**IN APPROPRIATE CASES, USE OF DUAL-FREQUENCY
TRANSMITTERS SERVES THE PUBLIC INTEREST**

Pac-West and PagePrompt have found that by sharing dual-frequency transmitters they can improve their paging service to the public. This mode of operation lowers their aggregate capital investment and operating costs per location, and thus permits them to provide an integrated wide-area paging service across a larger territory. In the aggregate, Pac-West and PagePrompt have a capital investment of about \$2 million for their separate 900 MHz paging systems.

Although the Commission did not intend to do so, proposed Section 22.507(a) threatens to destroy Pac-West's and PagePrompt's sharing arrangement. The Commission should note that Pac-West's and PagePrompt's transmitter-sharing arrangement is not motivated by any desire to warehouse channels, and does not produce warehousing.

^{4/} As amended, proposed Section 22.507(a) would then read:

(a) Unless otherwise allowed in this subpart, each station must comprise at least one separate and dedicated transmitter, providing service to the public, for each transmitting channel at each location where that channel is assigned for use by that station to a single licensee or its affiliates.

(Emphasis added to show the proposed change.) Pac-West and PagePrompt intend the phrase "affiliates" to incorporate the definition in proposed Section 22.108(b).

However, the problem which the parties face is how to afford to build a state-wide paging system before they have the business to justify the required capital investment. Transmitter sharing on an interim basis until their business develops is the answer to this problem. The parties' sharing contract provides that either of them can withdraw from the contract upon 6 months' notice to the other party. Thus, when their business improves, either of the parties can add its own dedicated transmitter at any formerly shared location to utilize the heretofore idle channel capacity.^{5/} This is not warehousing. In fact, upon full loading of the transmitter, the parties will be forced to replace the shared transmitters with dedicated transmitters.

Notably, other evidence also indicates that Pac-West and PagePrompt are acting in the public interest. The two carriers independently have established state-wide paging systems, each making substantial capital investments. The situation differs dramatically from that in which a carrier operates a single multi-frequency paging transmitter to retain multiple channels in a metropolitan area. Moreover, this shared transmitter arrangement promotes competition in the marketplace which is inherently in the public interest. The effect of the arrangement is to

^{5/} Idle channel capacity is inherent in the development of any paging system. Channel utilization of any paging system increases as the carrier adds subscribers. Until the channel is full, any paging channel has idle time. Thus, the evil which the Commission must be seeking to prohibit is not unused paging channel capacity, but a single licensee's intent to manipulate the Commission's licensing rules to hoard an idle channel indefinitely.

allow more new carriers to provide service to the public thereby maintaining fair pricing practices and quality of service standards. The carriers also operate and market their systems independently, thus potentially bringing paging service to separate market segments.

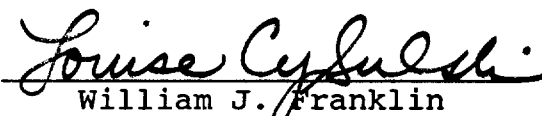
Indeed, the arrangement between Pac-West and PagePrompt is indistinguishable from the channel-sharing arrangements which the Commission routinely approves as one method of resolving mutually exclusive PLMS applications. If this arrangement is permissible to settle a contested case, why shouldn't it also be permissible as a negotiated agreement between independent parties?

CONCLUSION

Accordingly, Pac-West Telecomm, Inc. and PagePrompt U.S.A. respectfully request that the Commission adopt proposed Section 22.507(a) only with a modification that permits independent licensees to share in the use of a multi-frequency transmitter.

Respectfully submitted,

PAC-WEST TELECOMM, INC.
PAGEPROMPT U.S.A.

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